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Supreme Court of the United States

OCTOBER TERM 1948

No. 187

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WATCHTOWER BIBLE AND TRACT SOCIETY, INC.,
GEORGE KELLY, MAURICE L. HARE
and EARL W. HITCH

Petitioners

v.

METROPOLITAN LIFE INSURANCE COMPANY

Respondent

◆

Petition for Writ of Certiorari
to the Supreme Court of New York County
State of New York

HAYDEN C. COVINGTON
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WATCHTOWER BIBLE AND TRACT SOCIETY, INC.,
GEORGE KELLY, MAURICE L. HARE
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Petitioners

v.

METROPOLITAN LIFE INSURANCE COMPANY

Respondent

◆

Petition for Writ of Certiorari to the Supreme Court of New York County State of New York

TO THE SUPREME COURT OF THE UNITED STATES:

The petitioners, Watchtower Bible and Tract Society, Inc., George W. Kelly, Maurice L. Hare and Earl W. Hitch, present this petition for writ of certiorari to the Supreme Court of New York County, State of New York, to review a judgment on the remittitur and opinion of the New York Court of Appeals affirming judgments against your petitioners, and show unto the Court as follows:

Summary of Matters Involved

1. *Preliminary Statement.*

The decisions below flout this Court's decisions in *Schneider* v. *New Jersey*, 308 U. S. 147 (1939); *Largent* v. *Texas*, 318 U. S. 418 (1943); *Martin* v. *Struthers*, 319 U. S. 141 (1943); and *Tucker* v. *Texas*, 326 U. S. 517 (1946), justifying reversal simultaneously with granting the writ of certiorari. See pages 28, 29, 45-46 *infra*.

2. *Opinions of the Courts Below.*

The opinion of the trial court in this case is reported at 188 Misc. 978, 69 N. Y. S. 2d 385. It appears in the record. [988-1001][1] The Appellate Division of the New York Supreme Court affirmed without an opinion. The decision is reported at 272 App. Div. 1039, 75 N. Y. S. 2d 81. [1013, 1015-1016] The opinion of the New York Court of Appeals is reported at 297 N. Y. 572. It also appears in the record. [1023-1029]

3. *Statutory Provisions Sustaining Jurisdiction.*

The jurisdiction of this Court rests on Section 237 (b) of the Judicial Code, 28 U. S. C. 344 (b).

4. *Timeliness of the Petition.*

The judgment of the New York Court of Appeals was rendered April 22, 1948. [1023, 1030] The remittitur of the New York Court of Appeals was issued on April 23, 1948. [1031] The order of affirmance was entered May 8, 1948. [1035] The judgment of affirmance was entered May 19, 1948. [1033] An order was made by the Circuit Justice ex-

[1] Numbers appearing herein in brackets refer to pages in the printed record in this case.

tending time for filing this petition to August 14, 1948. [1036] The petition for writ of certiorari is filed within the time fixed by the order of the Circuit Justice.

5. *State Law Involved.*

Although no New York statute is directly challenged in this case the constitutionality and validity of state action through judicial enforcement, by the courts below, of the regulation of respondent, construed and applied to petitioners, are here drawn in question.

6. *Constitutional Provisions Involved.*

The First and Fourteenth Amendments to the United States Constitution protecting fundamental freedoms are relied upon.

7. *Federal Statutes Involved.*

The Federal Civil Rights Act, also protecting freedoms of press and of worship, is relied upon.

8. *Court Approved Regulation Complained Of.*

The Parkchester regulation promulgated by respondent and enforced by the courts below, which is drawn in question, reads as follows:

"No person or group of persons shall enter any apartment building in the Parkchester development for the purpose of convassing or of vending, peddling, or soliciting orders for any merchandise, device, book, periodical, pamphlet, circular, or for any printed, mimeographed, multigraphed or typewritten matter whatsoever; nor for the purpose of soliciting alms, donations, or a subscription or a contribution to any church, religious, charitable, or public

institution or organization whatsoever; nor for the purpose of distributing any handbill, pamphlet, circular, tract, book, booklet, notice, or advertising matter; nor for the purpose of playing any phonograph or musical instruments in said apartment houses in connection with such canvassing, vending, peddling, solicitation or distribution; provided, however, that such canvassing, vending, peddling, soliciting or distribution may be made with the consent of the Manager of the development or may be made within the apartment of any tenant if the prior written consent or invitation of such tenant shall have previously been furnished or exhibited to the Manager of the development." [19-20, 990-991]

9. *Questions Presented.*

Main Questions

ONE

Did judicial enforcement of the respondent's regulation by the courts below abridge the right of Jehovah's witnesses and petitioners to freedom of press and of worship of ALMIGHTY GOD contrary to the First and Fourteenth Amendments to the United States Constitution and the Federal Civil Rights Act?

TWO

Does the regulation of the respondent, as construed, applied and enforced by respondent and the courts below, abridge the rights of Jehovah's witnesses and petitioners

to freedom of press and of worship of ALMIGHTY GOD contrary to the First and Fourteenth Amendments to the United States Constitution and the Federal Civil Rights Act?

THREE

Was the regulation discriminatorily construed, applied and enforced by the respondent and the courts below so as to abridge the rights of Jehovah's witnesses and petitioners contrary to the equal protection clause of the Fourteenth Amendment to the United States Constitution and the Federal Civil Rights Act?

Subsidiary Questions

ONE

Did respondent's taking of the law into its own hands in its enforcement of the regulation by falsely arresting Jehovah's witnesses and petitioners, evicting them from the buildings, deporting them from the community, and its subsequent request for court approval of such action entitle petitioners to invoke the First and Fourteenth Amendments to the United States Constitution and the Federal Civil Rights Act, notwithstanding the regulation was no municipal ordinance?

TWO

Did the trial court abridge the constitutional rights of Jehovah's witnesses and the petitioners contrary to the First and Fourteenth Amendments to the United States Constitution by receiving into evidence and considering the hearsay poll of the inhabitants of Parkchester?

10. *How Federal Questions Raised and Disposed of Below.*

In a complaint filed in the New York Supreme Court, sitting in New York County, the petitioners asked the court "to vindicate and to declare that plaintiffs' activity has been wrongfully interfered with by defendant contrary to the Civil Rights Act of the United States, the Constitution of New York and the Constitution of the United States." [10-11] Petitioners alleged that they were engaged in preaching the gospel by means of distribution of literature and by word of mouth from door to door within the respondent's apartment community. [11-15] It is alleged that, because petitioners refused to discontinue such practice, the respondent, to enforce the regulation, took the law into its own hands and forcibly evicted petitioners from the halls of the apartment buildings where they were calling from door to door and deported them from the community. [15-16] Threats to continue such eviction and deportation by self help and taking the law into its own hands was alleged. [16-17, 20-21, 23]

Petitioners alleged that they were, by reason of such conduct by respondent, deprived of their right to have the issue adjudicated through criminal proceedings brought against them under the trespass statutes of New York and that they were forced and compelled to bring this action to have the regulation and the unlawful conduct of respondent declared to be an abridgment of the civil rights of petitioners. [25]

It was alleged that the regulation had been arbitrarily, capriciously and discriminatorily enforced against petitioners. [22] It was further alleged that the regulation, as construed, applied and enforced against petitioners, abridged their rights of freedom of press and of worship contrary to the First and Fourteenth Amendments to the United States Constitution. [22, 23, 25, 26-27]

All material allegations in the complaint were denied

by respondent. [29-36] By trial amendment, duly allowed by the court, respondent sought affirmative relief against petitioners and requested the court to enter a declaratory judgment against petitioners holding that they had no constitutional right to call from door to door in the apartment buildings; that the policy, practice and regulation of respondent, as enforced and applied against petitioners, were valid; that petitioners were guilty of trespassing against respondent in entering the apartment buildings without the consent of respondent; and that respondent had the legal right to forcibly remove and eject petitioners from said apartment buildings. [53, 756]

When petitioners rested their case, respondent moved to dismiss the complaint upon the grounds stated in the amendment. [756-758] In answer thereto, petitioners asserted that they had established a prima facie case for each and every one of the reasons alleged in the complaint and which grounds are stated above. [759-763] The court denied respondent's motion. [763]

At the close of all the testimony, the respondent renewed its motion stating explicitly all of the grounds asserted in the amendment. [896-898] The petitioners moved for a judgment for each and every one of the grounds stated in the complaint and explicitly set forth above. [898-899]

The motions were argued by counsel and the case, being fully briefed, was taken under advisement and decision reserved. [906] The trial court sustained the motion of respondent and overruled the motion of petitioners, holding that there was no deprivation of a constitutional right by state government power and that the abridgment by the private regulation of respondent was not within the grasp of the Fourteenth Amendment. [966-997] However, fearing its conclusion may be wrong that the Fourteenth Amendment did not reach petitioners, the trial court concluded

(assuming that the rights of the parties were to be tested by principles laid down in the decisions by this Court in reference to municipal ordinances and state statutes), nevertheless, that the regulation, as construed and applied to petitioners was valid even if it were considered to be a municipal ordinance or a state statute. For that reason the trial court held that the civil rights of petitioners were not violated. The trial court held that the law permitted municipal regulation of door-to-door activities upon private property so as to require a permit from the manager of the community or have prior written invitation of the householder, to be first filed with the manager, as a condition precedent to calling upon any resident in the community. [997-1001]

Upon appeal to the Appellate Division the judgment of the trial court was unanimously affirmed without opinion. [4, 1012-1013, 1015-1016]

An appeal was duly taken to the New York Court of Appeals. [1011-1012] The Court of Appeals refused to decide whether the Fourteenth Amendment proscribed private regulations made by dwelling proprietors governing conduct inside multiple dwellings. [1029] The Court of Appeals treated the regulation, as construed and applied by the respondent and the inferior New York courts, as though it were a municipal ordinance. [1026-1028] The Court of Appeals concluded that the construction of the United States Constitution was directly involved. [1025] The remittitur recites that a "question under the Federal Constitution was presented and necessarily passed upon". [1030] In determining the validity of the regulations, the Court of Appeals applied the principles requisite for determining the validity of a municipal ordinance or a state statute. [1026-1028] It held that the house-to-house calling by distributors of literature from door to door within a community, being upon private property, may be regulated by municipal ordinances requiring a permit or prior ex-

press invitation of the householder in the community as a condition precedent to the distribution of literature. [1028-1029]

11. *Nature and History of Action.*

This civil action was instituted by serving and filing a summons and complaint upon respondent. [6-28] The action was for a declaratory judgment and for injunction to redress the deprivation of the civil rights of petitioners within the privately-owned community of Parkchester in New York City. [26-27]

Respondent's answer, denying all the material allegations [29-52], was amended upon the trial. [53, 756] Respondent asserted that its enforcement of the regulation was valid and that petitioners' constitutional rights had not been abridged by the eviction from the multiple dwellings and deportation from the community. [29-52] The issue was joined before Mr. Justice Pecora in Special Term, Part V and trial began on May 15, 1946. [2, 59] The trial of the action ended on May 31, 1946. [2, 59-907]

At the close of petitioners' case, respondent made a motion to dismiss. [756-758] The motion was denied. [763] At the close of all the evidence both sides rested and respondent renewed its motion and petitioners moved for judgment awarding the relief prayed for in the complaint. [896-899] The cause was orally argued by counsel on May 28 and May 31, 1946, when it was submitted and decision reserved. [903-907]

Almost a year later, the court rendered its decision holding the regulation valid as enforced against the petitioners and for that reason ordered the complaint dismissed. [2-3, 988-1001]

On April 14, 1948, a judgment was entered dismissing the complaint. [54-57] The case was duly appealed to the Appellate Division of the New York Supreme Court. [3,

10-11, 58] The Appellate Division unanimously affirmed, without opinion. [1013, 1015-1016] Appeal was taken, as of right, to the New York Court of Appeals, because constitutional questions were involved, by the filing of a notice of appeal in the form and manner required by law. [1011]

The Court of Appeals affirmed by decision on April 22, 1948, and judgment of affirmance was entered on May 19, 1948. [1023-1029, 1932-1033]

12. *Summary of Facts.*

Respondent owns and operates Parkchester, an apartment community housing 12,000 families or over 35,000 persons, located in the Borough of The Bronx, New York City. [248-249, 256-257, 275, 956, 985][2] It is the largest housing project in the world, being composed of 171 apartment buildings ranging in height from seven to twelve stories. [257, 263, 264, 265-266, 267-268, 270, 956, 957-958, 959] These front on two public highways and several private streets that intersect the community, which is studded with parks and playgrounds. [263, 264, 265-266, 267-268, 270, 956, 957-958, 959]

On the ground floor and facing the streets in many of the buildings, are shops, stores, offices and gasoline filling stations. [257-258, 259-263, 267, 271-272, 764-765, 959-960] The usual municipal facilities of New York are used such as sewage disposal, fire protection and public library; and a federal post office is located in one of the buildings. [261-266, 764, 765, 766] Six hundred persons are employed to maintain this community. It has the appearance of any

[2] Respondent's project, Parkchester Community, to augment the slum-clearing efforts of the State of New York to provide good low-cost housing, was authorized by a special enactment of the Legislature of New York State. It is by virtue of this enactment that the Parkchester Community is operated by respondent. See Chapter 25 of the Laws of 1938 (p. 443). (Vol. 27, McKinney's Consolidated Laws. This act was amended in 1941, Chapter 577 of the Laws of 1941.) See also Chapter 808 of the Laws of 1939 (Vol. 44-A McKinney's Consolidated Laws, Annotated).

other community, town or city; it is described by the respondent as a "city within a city." [248, 271, 956]

The apartment buildings within which the door-to-door calling activity has been carried on in Parkchester are simple in design. [274] Each building has a double-door entrance, separated by a vestibule which leads to a public foyer, where there are located letter boxes and a directory of the tenants residing there. [274] There are no locks on the front doors at the entrances and no push buttons or buzzers or other communication system from the entrance to the apartments in each building. There are no doormen or guards located at the entrance. [274]

Each building has one or more self-operated push button elevators. [276] A narrow hallway is on each floor of the building. Each apartment opens onto such central hallway. On the door of each apartment is a two-tone chime switch, located below a peep hole, used for communication with occupants of the apartments. The buildings, foyers, elevators and halls are freely accessible to any caller desiring to enter. [276, 277]

All of the inhabitants of the community occupy the apartments under written leases made with the various 12,000 tenants, who are of the lower income bracket. [271, 324, 956, 960] The written lease obligates the tenants to obey all rules and regulations for the safety, care, and preservation of the buildings, as well as the regulations for good order, comfort, quiet, and convenience of all tenants. [36-51, 991-992] Since 1940 there has been a regulation that prohibited door-to-door calls by distributors of literature within the community unless permitted by the manager of the community, which regulation also prohibited such distributors from calling upon the tenants unless previously invited in writing to do so. The regulation required that the written invitation be tendered to the manager of the community before making such visit. This regulation, though unwritten at first, was put in writing later, finally

reaching, over the course of the years, the form shown in the record in this case. [277-278, 768-770] No concerted effort was made by respondent effectively to enforce the regulation by eviction of callers from the buildings or deportation from the community over the course of the years except as to Jehovah's witnesses. [281-282, 284-285, 286, 288, 354, 355, 358, 360, 364, 365, 366, 368-369, 370, 371, 387-388, 408-409, 435, 436, 768-770, 795, 797, 781-782, 802, 804-805, 810, 813, 818, 822, 826, 828, 834-835] Tacit and express approval has been allowed without a permit or without previous invitation by the tenants for certain types of solicitations and door-to-door calls since the inception of the regulation. [287, 290, 354, 358, 364, 368-369, 388, 435, 771, 794-795, 804-805, 813, 818, 828]

Following the opening of Parkchesteer in 1941, Jehovah's witnesses began their door-to-door missionary work by calling, without permission or prior invitation, upon the tenants. They distributed literature and talked with the people for the purpose of establishing Bible studies in the homes of the residents of the community, carrying on their work in a manner familiar to this Court. [66, 76-77, 78-79, 80, 81-83, 98-99, 100, 102, 103, 104-105, 106-107, 108-109, 117, 120-122, 123-124, 164, 165-166, 172, 173-174, 179, 180-181, 183-184, 185, 187, 343-344, 345, 347-348, 351, 362-363, 365, 380, 381-382, 440, 453, 528, 556, 557, 598, 618, 660-661, 672-673, 743-746, 747-749, 945-946, 952-953]

At first the evangelistic work was carried on by two female missionaries. [439, 452, 453] They were repeatedly interfered with and stopped, evicted from the buildings and deported from the community. [442, 443, 444, 449, 451, 453, 454-457, 459-460] This was done by the private police patrol maintained by respondents in Parkchester to guard the property and preserve order. [442, 443, 444, 449, 451, 453, 454-457, 459-460] This private safety patrol is under the protective division of the community of Parkchester, with

a staff fluctuating between 31 and 41 men who are on duty day and night. [281, 766-767]

The interference by the patrol caused a brief stoppage of the activities of Jehovah's witnesses which were resumed in 1943 within the community. The missionary field of Parkchester was then assigned to two men who devised a special technique for working in Parkchester so as to elude the pursuing guards. [474, 475, 476, 495, 497-498, 501, 502] These two men from time to time brought in other small groups of Jehovah's witnesses to assist them in preaching in the community. [475, 498-499, 504] This was made necessary by the constant and repeated interference by the safety patrol. [475, 476-477, 497] Notwithstanding the specially devised technique for Parkchester and the help of the groups, Jehovah's witnesses were continuously frustrated in their efforts to carry on the missionary work regularly in the community by the false arrests, evictions, and deportations from the community. [474-475, 476-477, 478, 497, 499, 771, 772]

From the beginning, Jehovah's witnesses experienced a satisfactory amount of interest on the part of the tenants in Parkchester, placed a large amount of literature, received contributions and called back upon the interested people. [441, 446, 448, 449, 450, 451, 457-458, 466-467, 469, 492, 503] Their method of approach to the people in the regular course of their preaching was courteous, kind and dignified. [446] They always immediately left each apartment door where the person answering the door was not interested. [475, 476, 497-498, 501, 502, 503] The director of the safety division followed Jehovah's witnesses on several occasions while they were engaged in their work and failed to find anything personally insulting or offensive to the tenants about their method of presenting their message. [771, 772]

The safety director informed Jehovah's witnesses in 1944 that the legal department of the community of Parkchester would get in touch with the legal department of the Watchtower Bible and Tract Society, Inc., the corporate legal governing body of Jehovah's witnesses in the United States. [105, 148, 340, 533, 717, 772-774, 908-910] Later the director personally apprehended Jehovah's witnesses and took them before the legal advisor for Parkchester who told them they had no right to work in the community. [774-775] As a result of these interviews a communication was made to the Watchtower Society resulting in a letter from counsel for Jehovah's witnesses and the Society to the legal department of Parkchester. [338, 934-942] Parkchester's legal department refused to exempt Jehovah's witnesses from the enforcement of the regulation and informed counsel that Jehovah's witnesses would be stopped from calling from door to door. [338, 943-944] From 1944 to 1946 the work of Jehovah's witnesses continued in the regular way, resulting in increased interference and almost complete frustration of their missionary activity by the illegal evictions and deportations. [575-581, 776, 777]

The director of the safety division again suggested to Jehovah's witnesses that the legal departments of petitioners and respondent get together and try to settle the controversy. [777] The respondent thereafter insisted on literal compliance with its regulation. The petitioners in response claimed they had a right to go from door to door in the community. Thereafter a mutual decision was reached that it would be best to clarify the controversy through court action. [333]

To bolster its questionable position and to support its discriminatory enforcement of the regulation against Jehovah's witnesses, the respondent conducted a poll of its tenants in the community on whether they desired Jehovah's witnesses to enter into their apartments, which plebiscite was taken with a view of using it upon the anticipated trial

of this action in the trial court. The canvass by mail vigorously importuned, if not tacitly coerced, the tenants to vote against Jehovah's witnesses. [299, 311, 979-981] A large number of the tenants did not reply to the solicitation and another forceful letter and card were mailed. [323, 328][3] The effect of this pressurized plebiscite (the tenants being under fear of refusal of the landlord to renew the lease and possible eviction in the face of the acute housing shortage) was that only 26 persons answered stating they wanted Jehovah's witnesses to come into their apartments. [322, 329-330, 981-982, 985] A scrutinous check of the poll upon the trial revealed numerous errors were committed by respondent in making its voting returns for the plebiscite. [327, 848-849]

When Jehovah's witnesses learned of the plebiscite, which continued in process after the action was instituted in the trial court, they planned to and did circulate a petition among a large portion of the tenants. [584-585] The petition was from the tenants and certified that those signing had no objection to Jehovah's witnesses calling from door to door. [584-585] Seventeen hundred and thirty-six tenants, out of seventy-four hundred and forty-six persons visited, signed the petition. [589, 593]

In order to do this operation it was necessary for an extraordinarily large number of Jehovah's witnesses to make a mass circulation of the petition in the community in one day. [584-585] On April 28, 1946, during the pendency of this action the petition (which was for the purpose of impeaching the illegal *ex parte* deposition taken by respondents without notice to petitioners) was circulated by over 700 of Jehovah's witnesses who entered all the apartment buildings in groups of four. [508, 586-589]

[3] Upon the trial this *ex parte* deposition, taken before trial and without notice, was objected to by the petitioners as immaterial, hearsay and a gross deprivation of their federally secured constitutional rights. [300-302, 304-307, 308, 311, 312-316, 317-318, 320, 321-322, 331]

As a joint result of the controversy having been stirred up by the respondent among the tenants through the taking of the *ex parte* deposition in the form of the poll and the mass circulation of the petition, a large number of complaints from the tenants went in to the protective division. [779-780] It was the result of these calls, during the heat of the controversy between respondent and petitioners, that some of the tenants complained, the number of 144 being relatively small under the circumstances. [779-780] In fact less than ten tenants appeared at the trial to testify concerning their objections to the calls made by Jehovah's witnesses upon them out of all of the thousands of tenants residing in the community. [799-800, 806, 807, 814, 829, 836] Equally as large a number appeared at the trial and testified that they had no objections to Jehovah's witnesses calling upon them at the doors of their apartments. [352, 357, 363, 366, 367, 386, 408, 434]

Specification of the Reasons Relied on for Allowance of the Writ

The holding of the courts below that the exercise of civil rights from door to door, whether at single dwellings along the streets, or in multiple dwellings or apartment buildings along the hallways, may be validly prohibited or validly censored because the doors are private property, not only is out of harmony with the decisions of this Court but flagrantly flouts the holdings of this Court in *Lovell* v. *Griffin,* 303 U. S. 444 (1938); *Schneider* v. *New Jersey,* 308 U. S. 147 (1939); *Cantwell* v. *Connecticut,* 310 U. S. 296 (1940); *Largent* v. *Texas,* 318 U. S. 418 (1943); *Murdock* v. *Pennsylvania,* 319 U. S. 105 (1943); *Martin* v. *Struthers,* 319 U. S. 141 (1943); *Follett* v. *McCormick,* 321 U. S. 573 (1944); and *Tucker* v. *Texas,* 326 U. S. 517 (1946), where

the activity made the basis of each conviction was carried on from door to door and upon private property.

The decision of the courts below, having treated the regulation as though it were a municipal ordinance, holding that the requirement of a permit from the manager of the community as a condition precedent to distribution of literature from door to door in Parkchester is valid as a regulatory power is out of harmony with, conflicts with and flouts the decisions of this Court in *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Schneider* v. *New Jersey*, 308 U. S. 147 (1939); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Largent* v. *Texas*, 318 U. S. 418 (1943); *Marsh* v. *Alabama*, 326 U. S. 501 (1946); and *Tucker* v. *Texas*, 326 U. S. 517 (1946).

The courts below, treating the regulation as though it were a municipal ordinance, held that the prohibition of door-to-door calls in Parkchester by means of the requirement that a written invitation from all the tenants be exhibited to the manager of the community is valid as a regulatory power, which holding is out of harmony with, conflicts with and flouts the decisions of this Court in *Jamison* v. *Texas*, 318 U. S. 413 (1943); *Martin* v. *Struthers*, 319 U. S. 141 (1943); *Marsh* v. *Alabama*, 326 U. S. 501 (1946); and *Tucker* v. *Texas*, 326 U. S. 517 (1946).

Holding that no constitutional right of petitioners was abridged by the conclusion that petitioners were trespassers in going from door to door in the community and could be evicted from the buildings and deported from the community to prevent such activity, the courts below made a decision which is out of harmony with and conflicts with the decisions of this Court in *Marsh* v. *Alabama*, 326 U. S. 501 (1946), and *Tucker* v. *Texas*, 326 U. S. 517 (1946). Compare *Republic Aviation Corporation* v. *National Labor Relations Board*, 324 U. S. 793 (1945).

In the event the question of whether the Fourteenth Amendment reaches the petitioners in this case so as to afford them the protection of the First Amendment against the court approval of the respondent's enforcement of the regulation of petitioners' activity upon the private property of respondent in the circumstances is reached and considered in this case the petitioners say that the holding below departed from and is in conflict with the decisions of this Court in *Shelley* v. *Kraemer,* 68 S. Ct. 836, and *Hurd* v. *Hodge,* 68 S. Ct. 847, both of which were decided on May 3, 1948.

The decisions of the courts below have so far departed from the ordinary and usual course of judicial proceedings as to require a consideration thereof by this Court and a reversal of the court below so as to halt the same.

In event this Court fails to find that there is a conflict between the decisions of the courts below and the decisions of this Court, then petitioners say that the questions presented upon this petition are grave and important federal constitutional questions which have not been, but which should be, decided by this Court.

Discussion of the Reasons

It is proper to assume that, because the court of Appeals decided the case upon principles applicable to review the enforcement of state action through legislation, the Court will not reach the question of whether there has been an infringement through state action through court approval of the enforcement of the regulation. Therefore the petitioners first discuss the validity of the regulation as though it were municipal or state legislation.

Not Regulatory

The term "regulation", applied to the device promulgated and enforced by respondent, is a mere euphemism. It is not regulatory. It does not purport to regulate the time and manner of door-to-door calls in Parkchester. It specifically and expressly prohibits such calls. It provides for an exception. The exception subjects door-to-door callers to censorship. The regulation neither expressly nor impliedly purports to regulate as to time, place and manner. The device is not a regulation.

"The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." *Cantwell* v. *Connecticut*, 310 U. S. 296, 306 (1940).

To be regulatory the device must state the times, places and manner of door-to-door calls. This is the only right that a community has in reference to door-to-door calls by persons exercising their rights of freedom of speech, press and worship.

Provisions for a permit were brought under review in *Blue Island* v. *Kozul*, 379 Ill. 511, 51 N. E. 2d 515 (1942). The Supreme Court of Illinois there said: "It is contended by the city that this is a regulatory ordinance. . . . The ordinance is not regulatory. As applied to the facts in this case, the ordinance makes no provision regulating the manner of carrying on the business of peddlers in the city of Blue Island."

In *McAlester* v. *Grand Union Tea Company*, 186 Okla. 487, 98 P. 2d 824 (1940), the court said: "The ordinance now considered is not regulatory but preventative and prohibitive as against an act innocent in itself and without surrounding facts or circumstances that would constitute the act of a public nuisance." See also *State* v. *McMonies*, 75 Neb. 443, 106 N. W. 454, where it is said: "It is familiar law that the power given a municipality to 'regulate' does

not authorize it to suppress or prohibit a trade or business, as the very essence of regulation is the existence of something to be regulated."

Door-to-door calls are not allowed to exist under the Parkchester device, except through the censorship of the manager of the community, which is unconstitutional. The requirement of prior written consent of the tenant and exhibition of such written consent to the manager of the community destroys and prohibits entirely door-to-door calls. It is obvious that the device is not regulatory and that the term "regulation" is a misnomer.

Door-to-Door Calls on Private Property Protected by the Constitution

Disregarding the standing precedents of this Court, the Court of Appeals below blindly and summarily concluded that the Constitution does not protect door-to-door distribution of literature, even when done at single dwellings fronting on public streets, because the doors are private property. [1026-1028] The trial court did not go quite that far. It limited the rule of prohibition and censorship of door-to-door activity to apartment buildings, stating that the decisions of this Court upheld the right of Jehovah's witnesses to go from private house to private house "abutting" on the *streets*. [997]

Until the alien doctrine advocated by the respondent was accepted by the New York Court of Appeals, it had not been supposed that one engaged in the distribution of literature from door to door stood on a more precarious ground than did one engaged in street and public sidewalk distribution of the same literature. Indeed this Court has declared, so far as distribution of literature was concerned, that "the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people." (*Schneider* v. *New Jersey*, 308 U. S. 147) The

Court sustained the right of Jehovah's witnesses to distribute literature from door to door against laws forbidding it aimed to protect the peace, quiet and convenience of the householders in the cases of *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Schneider* v. *New Jersey*, 308 U. S. 147 (1939); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Largent* v. *Texas*, 318 U. S. 418 (1943); *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943); *Martin* v. *Struthers*, 319 U. S. 141 (1943); *Follett* v. *McCormick*, 321 U. S. 537 (1944); and *Tucker* v. *Texas*, 326 U. S. 517 (1946). The New York Court of Appeals failed to notice the alleged lack of protection extended by the Constitution to door-to-door distributors of literature by respondent, when it ruled in favor of Jehovah's witnesses in *People* v. *Barber*, 289 N. Y. 378 (1943).

It must be conceded by respondent that this Court has held that the Constitution does guarantee the right to carry on door-to-door distribution of literature. If that is so then does it not make the freedom meaningless to suggest that it cannot be exercised on privately-owned sidewalks and steps or at the doors of the people? How can one make door-to-door distribution without getting to the doors? How can one knock at the doors or ring doorbells or chimes without being at the doors? The mere asking of these questions suggests (subject to the liability for trespass against the individual householder) that the freedom carries with it the right to call at the doors of the homes of the people.

To induce the court below to reach this result, respondent took a number of decisions by this Court involving the distribution of literature upon the streets where the courts have held that the streets are a proper place to distribute literature (*Hague* v. *C. I. O.*, 307 U. S. 496; *Jamison* v. *Texas*, 318 U. S. 413 (1943); and *Marsh* v. *Alabama*, 326 U. S. 501 (1946)) and by disingenuous sleight of hand swept into this category the case of *Tucker* v. *Texas*, 326 U. S. 517 (1946), which involved the right to distribute

literature at the doors of the homes of the people on private property contrary to the commands of the landlord not to do so. If, as respondent and the Court of Appeals contend, the constitutional right to distribute literature does not guarantee the right to go from door to door, then this Court has too long been oblivious to the phantasm so quickly perceived by the respondent and the New York Court of Appeals.

Constitutional Protection of Door-to-Door Calls Covers Such Activity in Apartment Buildings

The trial court, with approval of the Court of Appeals, held, since the right to call from door to door at single dwellings did not carry with it the privilege of entering such private homes, that by force of the same reason it did not carry the right to enter apartment buildings without the consent of the landlord. [997-998]

The respondent, in the courts below, made the fantastic argument that the provisions of its lease expressly and impliedly reserve to the landlord absolute dominion over the hallways, stairways and entrances to the buildings. Respondent amended the lease by construction which is strained beyond the breaking point. There is absolutely nothing in the lease agreement that explicitly or implicitly retains dominion over the hallways and entrances to the buildings which give the landlord control and the right to regulate in respect to visitors of the tenants. The leases and regulations printed on the back of them relate only to the power to control the conduct of the tenants in reference to quietness so as to prevent disturbances to their neighbors. Nothing is said in the leases which intimates an intention of the landlord to control visitors in the manner done by the regulation in this case.

The respondent argues that the halls are strictly private. This is an extreme argument. While the halls are not

public in the sense that streets are public they are public insofar as the means of ingress and egress to the apartments is concerned. Indeed the printed regulations on the back of leases signed by the tenants describe the halls, stairways, elevators, and elevator vestibules as "public". Regulation No. 1 provides that the "public halls" shall not be used "for any other purpose than for ingress to and egress from the apartments." [49-51]

Inasmuch as the lease does not expressly or impliedly grant to the landlord an absolute control over visitors of the tenants using the hallways and calling at the tenants' doors, it cannot be contended that the regulation, questioned here, is a covenant in the lease as claimed by respondent.

The pit that respondent and the courts below have fallen into is the result of a snare. It is the specious argument that the halls of the apartments have not been thrown open to the "public" for meetings like the public streets and parks. This unfortunate analogy of respondent and the courts below is factitious. It is not necessary that the means of ingress and egress to a door be dedicated and opened up to the public generally to be available to one engaged in distributing literature under the guarantee of the Constitution. Indeed no private sidewalk that leads over the yard or lawn of any dwelling has been dedicated for public purposes. Yet it has never been argued that one making use of such private sidewalk or paths can be deprived of his constitutional right of going from door to door distributing literature purely because such places have not been opened up to the public. Since it is not necessary to have private sidewalks and paths dedicated to the public in order to make them available to carry on door-to-door work at single dwellings, it is not necessary to show that the hallways of apartment buildings have been dedicated to the public before using them for the same purposes.

This brings us down to the beginning of the aberration of respondent and the deflection of the courts below. A consideration of an appropriate analogy will demonstrate that the respondent and the courts below 'jumped the track and derailed the freedom train'. Suppose that instead of building 171 apartment buildings on the acreage the respondent erected 171 single dwellings. Assume that the grounds remain the same as they are now and that, except for the two public streets traversing the property, the streets are private as they are now. Also suppose that the community remains open as it is now, having, of course, its shopping centers to accommodate the dwellers. Also suppose that such single dwellings would be built with sidewalks over the lawns connecting the door of the dwelling to the sidewalk and street, which naturally they would have. Suppose that the same kind of lease with the same kind of provisions appeared in the lease between the tenants of the supposed 171 single dwellings as the respondent now has with the present 12,500 tenants. Also suppose that the respondent maintained the same policy for its management of the project of 171 single dwellings and had promulgated the same regulation in respect to door-to-door calls as it now has in force. Suppose Jehovah's witnesses attempted to work the community of 171 single dwellings as they have attempted to work the apartment community. Assume also that they encountered the same difficulty resulting in the same action and with the same proof adduced in this case.

In such a supposition could it be reasonably and successfully argued that the landlord, the respondent herein, by virtue of its proprietary interest could stop Jehovah's witnesses from calling from door to door? It seems quite obvious in such a circumstance that the landlord could not do it legally, because the rights of Jehovah's witnesses to call from door to door are guaranteed by the Constitution.

From time immemorial the knock at the door, when not used to breach the peace, has been a legitimate means of

summoning the inmates to the door for purposes of intercommunication. It should be observed that at Parkchester community each tenant has a chime switch instead of a knocker or bell at the door. This is an implied invitation.

In *Fogarty* v. *Bogart*, 59 App. Div. 114, 146, 69 N. Y. S. 47 (1901), the question was whether or not a person who rang a doorbell to make an inquiry but made the unfortunate mistake of ringing the doorbell at the wrong house was an invitee. The court said:

"A person ringing the doorbell of a house not wantonly or in mischief, but in good faith for civil inquiries, is neither a trespasser nor a mere licensee, but is in the position of one who is rightfully there on the implied assurance of ordinary safety which is furnished by the presence and the purpose of the bell. . . . The case is distinguishable from that of a technical trespasser or one on the premises by license or mere sufferance. . . . Doorbells are occasionally rung for the mere purpose of inquiring the way, or the residence of someone in the neighborhood, or in the business of vending wares. In all such cases the bell must be regarded, in the absence of limitation or warning, as an implied invitation."

Petitioners assert that reception of guests or visitors of tenants is strictly a private right belonging to each individual tenant in the building, and that unless surrendered by an express agreement such right cannot be overcome and superseded by the regulation of Parkchester community based on its property rights or fancied "control" of the premises. The tenants' right to receive guests in their respective apartments or at their doors is one that has always been accorded in this country and is a matter of common knowledge and practice.

A question very similar to that now posed to this Court was presented to and decided by the United States Circuit Court of Appeals for the Second Circuit, in *Woods* v. *Carol Management Corporation*, No. 278, October Term,

1947, decided June 16, 1948. In that case duly authorized inspectors of the Housing Expediter attempted to enter the apartment house under control of the Carol Management Corporation to interview the tenants to ascertain whether there had been violations of the Rent Regulations and the Emergency Price Control Act of 1942 and the Housing and Rent Act of 1947.[4] The landlord denied entry to the inspectors. An action for injunction was brought in the federal court to restrain the barring of the inspectors from using the hallways and visiting the tenants. The district court, like the courts below in this case, held that the inspectors had no right to enter the building and denied relief. The court of appeals reversed by unanimous decision. Among other things, the opinion of the court states:

"The violations of the Act relied upon by the plaintiff were the refusal to allow inspection and the withholding by the defendants of access to their tenants. The Expediter represented a public interest and had an authority to take necessary steps to prevent such violations. While his information about violations was derived from complaints of tenants, such complaint, when reasonably verified, might form the basis for various proceedings to enforce the Act, and we see no justification for inconveniencing both the Expediter and the tenants by requiring the former to make his investigations in the roundabout way of summoning the tenants to his office rather than in calling upon them at the apartment and directly ascertaining conditions there. Indeed, it is impossible to see what right the defendants had either to exclude their tenants from having callers or to debar the representatives of the Expediter who wished to talk with the tenants about the alleged grievances of the latter. These representatives sought to call on the tenants as to lawful business with which both the Expediter and the tenants were properly concerned. They were in no sense

[4] 50 U. S. C. App., §§ 901 (b), 925 (a), (c), and (e) and 50 U. S. C. App. §§ 1884 (a) and 1886 (b).

mere interlopers whom the landlords might exclude from the passageways in the apartment house."[5]

In *People* v. *Paul,* 117 N. Y. L. J. 882 (Sup. Ct. March 5, 1947), Mr. Justice Wenzel, sitting in Special Term, Part II, New York County, in dismissing a writ of habeas corpus, said: "The door to a man's house in a civilized community is more than a means in ingress and egress for him. It is a tacit invitation to those who have lawful business with him to stand before it and announce themselves by ringing his door bell. Though they be then upon his property they are not trespassers and do not become such until they overstay their welcome and ignore a request to leave. If they have business with someone other than the owner resident in the building, they have a right to request to be announced to such a person and to be told by such a person or his or her agent that such person does not wish to see them if that is the fact."

The question here presented is also answered by the decision of the Massachusetts Supreme Judicial Court in *Massachusetts* v. *Richardson,* 313 Mass. 632, 48 N. E. 2d 678 (1943). There two of Jehovah's witnesses were arrested under a state statute while engaged in calling on residents of an apartment building over the protests of the owner of the building. Ruling on this precise issue, the court said:

"Whether the defendants entered the common passageways of the buildings in question in violation of the statute depends upon the extent of the control of the landlord thereof, and that of the respective tenants. It is settled that, when a landlord lets property to be occupied by several

[5] See also Williams v. Lubbering, 73 N. J. L. 317, 63 A. 90 (1906); Goldstein v. Healy, 187 Cal. 206, 201 P. 462, 464 (1921); Williams v. Mayer, 4 S. 2d 71, 72 (1941); Montgomery v. Virginia, 99 Va. 833, 37 S. E. 841 (1901); Suggs v. Anderson, 12 Ga. 461 (1853); Konick v. Champneys, 108 Wash. 35, 183 P. 75, 77 (1919); Mitchell v. Georgia, 12 Ga. App. 557, 77 S. E. 889 (1913); English v. Thomas, 48 Okla. 247, 149 P. 906; Duff v. Eichler, 336 Mo. 1164, 82 S. W. 2d 881 (1935); Federal Waste Paper Corp. v. Garment Center Capitol, 268 App. Div. 230 (affirmed 294 N. Y. 714); and Thousand Island Park Ass'n v. Tucker, 173 N. Y. 203.

tenants, although he retains for certain purposes control of the common doorways, passageways, stairways and the like, he grants to his tenants a right of way in the nature of an easement, appurtenant to the premises let, through those places that afford access thereto. *Hart* v. *Cole*, 156 Mass. 475, 476. *Tremont Theatre Amusement Co.* v. *Bruno*, 225 Mass. 461, 463. *Melville Shoe Corp.* v. *Kozminsky*, 268 Mass. 172, 180. This is necessarily so since 'the grant of any thing carries an implication, that the grantee shall have all that is necessary to the enjoyment of the grant, so far as the grantor has power to give it.' *Salisbury* v. *Andrews*, 19 Pick. 250, 255. It is also settled that this easement extends to the members of the tenant's family and to all his guests and invitees. *Bacon* v. *Jaques*, 312 Mass. 371, 373, and cases cited."

Regulation is Void Because of Censorship

Provisions of ordinances and municipal regulation of door-to-door callers in communities similar to the provisions of the device in this case have been time and again declared invalid because providing for censorship. *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Schneider* v. *New Jersey*, 308 U. S. 147 (1939); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Thomas* v. *Collins*, 323 U. S. 516 (1945); *Saia* v. *New York*, 68 S. Ct. 1148 (June 7, 1948).

Regulation is Void Because of Prohibition of Door-to-Door Distribution

Regulations which prohibit absolutely the distribution of literature and preaching from door to door on private property are void.

Laws or regulations prohibiting, either expressly or impliedly, door-to-door or house-to-house calls by itinerant ministers distributing Bible literature, are unconstitutional

because abridging the right of freedom of press and of worship. "Ordinances absolutely prohibiting the exercise of the right to disseminate information are, *a fortiori*, invalid." (*Jones* v. *Opelika*, 316 U. S. 584, 595-596 (1942)). This was a statement by Mr. Chief Justice Stone in his dissenting opinion. This dissenting opinion was adopted as the opinion of the Court, following a reargument, when the majority decision was reversed. *Jones* v. *Opelika*, 319 U. S. 103 (1943). See also *Martin* v. *Struthers*, 319 U. S. 141 (1943), *Jamison* v. *Texas*, 318 U. S. 413 (1943); *Schneider* v. *New Jersey*, 308 U. S. 147, 162 (1939); *Thornhill* v. *Alabama*, 310 U. S. 88 (1939); *Carlson* v. *California*, 310 U. S. 108 (1939); *Near* v. *Minnesota*, 283 U. S. 697 (1931), holding that laws prohibiting the distribution or sale of literature are unconstitutional.

Prior-Consent-of-Tenant Provision Void

The regulation provides that before any distributor may call upon a tenant, a written invitation must be procured from the tenant and produced to the manager for his approval. This is unconstitutional and is a burden which abridges the constitutional rights of freedom of press and of worship exercised by petitioners in Parkchester. It is impossible to carry on door-to-door evangelism if the opportunity to discuss with the householder the message offered is denied.

The requirement of prior consent obtained in writing finds its genesis in the famous ordinance of Green River, Wyoming, from which this variety of ordinance gets its name. The ordinance was held valid as applied to peddlers of goods and merchandise in *Town of Green River* v. *Fuller Brush Co.*, 65 F. 2d 112 (C. C. A. 10th). The "Green River" type of law prohibits door-to-door calls and visits upon occupants of a household unless the caller has been invited previously. This kind of law or regulation has been held

void and unconstitutional by the great weight of authority in many jurisdictions in the United States.

The leading cases of the various jurisdictions making this holding are here cited: *City of Orangeburg* v. *Farmer*, 181 S. C. 143, 186 S. E. 783 (1936); *Jewel Tea Co.* v. *Bel Air*, 172 Md. 536, 192 A. 417 (1937); *Prior* v. *White*, 132 Fla. 1, 180 S. 347 (1938); *White* v. *Town of Culpeper*, 172 Va. 630, 1 S. E. 2d 269 (1939); *City of McAlester* v. *Grand Union Tea Co.*, 186 Okla. 487, 98 P. 2d 924 (1940); *City of Columbia* v. *Alexander*, 125 S. C. 530, 119 S. E. 241 (1923); *Real Silk Hosiery Mills* v. *City of Richmond, Calif.*, 298 F. 126 (1924); Ex parte *Maynard*, 101 Tex. Cr. R. 256, 275 S. W. 1070 (1925); *New Jersey Good Humor, Inc.* v. *Board of Comm'rs*, 124 N. J. L. 162, 11 A. 2d 113, 114 (1940); *Jewel Tea Co.* v. *City of Geneva*, 137 Neb. 768, 291 N. W. 664 (1939); *Hague* v. *C. I. O.*, 101 F. 2d 774; 307 U. S. 496 (1939); *City of Mount Sterling* v. *Donaldson Baking Co.*, 287 Ky. 781, 155 S. W. 2d 237 (1941); Ex parte *Faulkner*, 143 Tex. Cr. R. 272, 158 S. W. 2d 525 (1942).

When applied to the activities of Jehovah's witnesses from door to door the "Green River" ordinance has been held to be an unconstitutional abridgment of the civil rights as construed and applied. See *Zimmermann* v. *Village of London, Ohio*, 38 F. Supp. 582 (April 1941), and *Donley* v. *Colorado Springs*, 40 F. Supp. 15 (August 1941). This same type of ordinance, in order to avoid the holding of unconstitutionality in the case involving one of Jehovah's witnesses, was construed not to apply to Jehovah's witnesses in their door-to-door missionary work. *Shreveport* v. *Teague*, 200 La. 679, 8 S. 2d 640 (1942). In one case where this type of ordinance was applied to Jehovah's witnesses, it was held to be invalid on its face. *De Berry* v. *La Grange*, 62 Ga. App. 74, 8 S. E. 2d 146 (1940). The Georgia Court of Appeals in this case merely went along the path, fixed by such greater weight of authority, which concludes that the "Green River" type of ordinance is void on its face

and unenforceable, even against door-to-door calls for commercial purposes.

The decision in *People* v. *Bohnke*, 287 N. Y. 154, 38 N. E. 2d 478 (1941) (certiorari denied, 316 U. S. 667; rehearing denied, 316 U. S. 713), involving a "Green River" ordinance and relied upon by the courts below, was apparently overruled *sub silentio* by the decision of this Court in *Martin* v. *Struthers*, 319 U. S. 141 (1943). Two years after the denial of certiorari in the *Bohnke* case, this Court decided the *Martin* case from Ohio. The City of Struthers passed an ordinance making it unlawful for "any person distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills." This Court, in 1943 (319 U. S. 141), struck down that ordinance as an unconstitutional infringement of freedom of speech, press and worship, of (1) the person engaged in the activity and (2) the person who receives the message from the distributor.

The Court said: "Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas." *Martin* v. *Struthers*, 319 U. S. 141, 146-147.

In connection with the denial of certiorari in the *Bohnke* case, the Court's remarks in *House* v. *Mayo* (324 U. S. 45, 47, 48) are appropriate: "The district court also referred to a denial by this Court of a petition for certiorari, filed

here after the Florida Supreme Court of one of the applications for habeas corpus. See *House* v. *Mayo,* 322 U. S. 710. The district court thought that this was an expression 'of the opinion that no meritorious question is presented by the matters of which petitioner here complains.' But as we have often said, a denial of certiorari by this Court imports no expression of opinion upon the merits of a case. See *Hamilton-Brown Shoe Co.* v. *Wolf Brothers,* 240 U. S. 251, 258; *State of Ohio* ex rel. *Seney* v. *Swift & Co.,* 260 U. S. 146, 151; *United States* v. *Carver,* 260 U. S. 482, 489; *Atlantic Coast Line R. Co.* v. *Powe,* 283 U. S. 401, 403, 404." *House* v. *Mayo,* 324 U. S. 45, 47, 48. See also *Wade* v. *Mayo,* 68 S. Ct. 1270, 1274.

The trial court in its decision, which was approved by the New York Court of Appeals, misconceived and misapprehended the dictum of the case of *Martin* v. *Struthers,* 319 U. S. 141. The trial court said that the device here challenged is that type of regulation indicated by the Court to be valid in the opinion in *Martin* v. *Struthers.* [999-1001] The trial court quoted extensively from the opinion in the *Martin* case. [999-1001] It is quite obvious that the quotation does not support the conclusion reached by the courts below. For instance, the regulation in this case does precisely what was condemned in the *Martin* case, in this language: "The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors." (319 U. S. 141, 147) [1000] The "traditional legal methods" for the protection of each householder are found in the trespass statutes of New York. If a door-to-door caller refuses to leave when ordered to do so by the tenant, he makes himself liable for prosecution under the trespass statutes. The Penal Code of New York sufficiently protects the householder whether he be a tenant or not, without any further regulations promulgated by the property owner or landlord. The Penal Code, Sec-

tion 2036, provides: "A person who intrudes upon any lot or piece of land within the bounds of a city or village, without authority from the owner thereof, or who erects or occupies thereon any hut, or other structure whatever without such authority; and a person who places, erects, or occupies within the bounds of any street or avenue of a city or village, any hut, or other structure, without lawful authority, is guilty of a misdemeanor."

Considerable discussion was made by the trial court who claimed that the regulation leaves the matter of house-to-house calls with the tenants themselves. In *Martin* v. *Struthers,* 319 U. S. 141, it was suggested that an ordinary trespass law or a special trespass law which made it an offense to call at or knock on a door where there was a suitable indication or previous warning not to call or knock would be permissible. By casuistry the landlord, and the courts below, in these proceedings likened the regulation to the one suggested by this Court in the *Martin* case that may be found valid. There is no analogy between the two.

The ordinance proposed by the National Institute of Municipal Law Officers, mentioned in the *Martin* case, prohibits knocking on doors or ringing door bells where the householder has previously indicated that he did not desire the proposed visit. This is a special trespass law to prevent the annoyance of a knock from one warned not to return. But the device of the respondent is quite different. It does not proscribe trespass or knocking on doors where the tenant has previously indicated that the visit, return visit or knock is forbidden. It prohibits all door-to-door calls outright. It prevents any visitation upon the tenant by Jehovah's witnesses unless permission in writing previously obtained is exhibited to the manager of the community. This plainly is not a trespass law or a regulation devised to prohibit trespass. It is a regulation which attempts to make a nuisance out of that which is lawful and make trespass that which is not trespass under the common law of

the State of New York. Therefore the regulation sired by the respondent in this case gets no succor from the dictum in the *Martin* case above referred to. It just does not come in the class of the law mentioned by the National Institute of Municipal Law Officers.

The regulation does not leave the matter of calls with the householders of Parkchester, as does the general trespass statute or the proposed special trespass legislation. Such plainly valid law prevents unwanted knocking at the doors or ringing of door bells by visitors warned to stay away by the householder. The regulation here challenged is, like what this Court said of the ordinance in the *Martin* case, a determination by the community of Parkchester to stop door-to-door calls by Jehovah's witnesses which cannot be constitutionally done by a municipality. Since a municipality does not have the power to make such a determination for the householder the community of Parkchester does not have that power either, merely because it happens to be operated by a single private owner.

The device in this case, erroneously described as a regulation, does not purport to protect the "householder who has appropriately indicated that he is unwilling to be disturbed." [1001] The regulation here bans all door-to-door visits. It is not confined to a prohibition of visits to homes where appropriate indications had been made by the tenant that he was unwilling to be called upon. The regulation does not leave the decision "where it belongs—with the homeowner himself." [1001] The regulation does not let the visit depend upon the will of the householder, but "upon the determination of the community" [1001] of Parkchester that promulgated the regulation.

It is wholly unnecessary for Parkchester community to augment the Penal Code by the promulgation of its regulation. The health, welfare and property of the residents of Parkchester are sufficiently protected by the Penal Code pro-

visions prohibiting trespass. Admittedly respondent does not enforce the regulation to protect its property rights and interest in this action. It claims that the regulation was promulgated for the peace and security of the tenants. It is for the tenants and residents of Parkchester to determine in each case, as callers go from door to door, whether or not they desire to receive such visitors. If a caller refuses to pass on when ordered to do so, he is subject to prosecution under the trespass statute. That adequately protects the tenant. The Parkchester regulation is wholly unnecessary for the protection of the tenants and residents.

The New York trespass statute authorizes a conviction of one who calls at a home in defiance of the previously expressed will of the occupant. "A city can punish those who call at a home in defiance of the previously expressed will of the occupant and, in addition, can by identification devices control the abuse of the privilege by criminals posing as canvassers." (*Martin* v. *Struthers*, 319 U. S. 141, 148) The device or regulation here in question does not purport to do either of these things.

The provision that one must have prior written consent before calling upon the householder is incongruous. The only effective way that such consent could be procured would be to call upon the householder first. One would be compelled to violate the regulation in order to comply with it to procure the written consent. The ridiculousness of such requirement is apparent upon the face of the device.

If it is made unlawful to summon a person to the door to receive the printed message unless one had been invited in writing to do so, how could petitioners and Jehovah's witnesses know whether the persons were interested or not? If denied that right to call the people to the door, it would require mailing the publications or calling by telephone at a later date, which would double the inconvenience of the parties that could easily be spared by a contact with the householder and discussion on the first visit.

The regulation deprives householders of their inherent right to determine whether or not they will receive from distributors of literature pamphlets or other publications, which are and rightly can be offered from house to house or door to door. The individual distributors have a vital message to deliver to residents of Parkchester. If they cannot discuss with the residents the literature until after written permission is obtained, it is necessary that a letter be written to each person or a call made by telephone. Are we to expect that the distributor of information and opinion in printed form must make a mailing list or a telephone list of all the residents of each apartment building where he aims to deliver literature and then write or telephone each individual resident in an attempt to procure written permission from the resident who is interested in the literature? That would impose an impossible burden upon the disseminator of ideas. It would also place a very burdensome duty upon the householder. It would require a work which would become a greater burden to the tenants and other members of each householder in Parkchester than the summoning of the householder to the door in the first instance.

The Parkchester regulation places the cart before the horse. It makes the activity completely impractical and effectively deprives the disseminator of ideas of all right to distribute literature.

The regulation cuts off from the distributor his main, if not sole, avenue of communication of information and opinion and invitation to study Bible literature or attend Bible meetings. He is denied more interested persons for want of contact. The regulation cuts off the necessary democratic, social intercourse among people, and thereby makes it dangerous for one citizen to call upon and visit his neighbor for such lawful purposes.

Discriminatory Enforcement of Regulation Invalidates It

The respondent has permitted, under the provisions of the regulation authorizing it to do so, other charitable organizations to call from door to door in Parkchester. [287, 289-290]

Allowance of solicitation by other organizations and permitting them to make door-to-door calls is discrimination of a type which violates the equal protection clause of the Fourteenth Amendment. *Skinner* v. *Oklahoma,* 316 U. S. 535 (1942); *Shelley* v. *Kraemer,* 68 S. Ct. 836 (1948).

The very purpose of the Constitution is to equalize the rights of every individual and make the same in every state and subdivision thereof, and these rights cannot be taken away by arbitrary discrimination by a community like Parkchester.

The very purpose of the "equal protection" clause is to insure equality of freedom of locomotion, travel and commerce for all inhabitants of the states and of subdivisions thereof.

Here the attempted enforcement of the Parkchester regulation amounts to class legislation and discrimination against some and favoring of others. Even all door-to-door callers under the regulation are not treated alike. The Red Cross, Boy Scouts, and others, are favored over Jehovah's witnesses. Additionally, the regulation as enforced and applied does not treat equally all persons who, though not peddlers, are desirous of exercising press activity within boundaries of the community.

In *Truax* v. *Corrigan,* 257 U. S. 312, 331-333 (1921), it is said: "But the framers and adopters of this [Fourteenth] amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific

guaranty. The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process."

Certainly it is unreasonable to allow one person or class to call from door to door and exclude others, particularly where the entranceway to each building is open and there is an implied invitation or consent to come upon the premises.

Petitioners Protected by Fourteenth Amendment

It will be unnecessary for this Court to consider this point if the Court, like the New York Court of Appeals, decides the question as though a municipal ordinance was involved and applies the principles of the former decisions of this Court involving Jehovah's witnesses, which have been cited to the Court. But in event the Court deems it advisable to consider the contention, which was made by respondent in the courts below, that the Fourteenth Amendment does not reach petitioners, then this portion of the discussion should be considered.

The respondent asserts that since there are no criminal sanctions in the regulation and inasmuch as the respondent could not provide for criminal sanctions the regulation does not amount to law. It has been held that it is not necessary for a regulation to have criminal sanctions. A regulation without criminal sanctions may be the basis of invoking the Fourteenth Amendment when it is tested in judicial proceedings. *Hamilton* v. *Regents,* 293 U. S. 245 (1934); *Sterling* v. *Constantin,* 287 U. S. 378 (1932). It should be remembered that the respondent could easily give criminal sanctions to the regulation by instituting criminal proceedings charging trespass against petitioners for going from door to door in Parkchester contrary to the provisions of

the regulation. In fact the reason petitioners went to the civil courts was because of the failure of respondent to invoke the criminal process and took the law enforcement into its own hands.

If the respondent had resorted to the criminal process of the judiciary of the state by prosecuting petitioners for trespass there would be no question that such action would entitle any one of petitioners prosecuted as a trespasser to invoke, in defense to the criminal charge of trespass, the Fourteenth Amendment. In fact respondent would have to concede the right. *Marsh* v. *Alabama,* 326 U. S. 501 (1946); *Tucker* v. *Texas,* 326 U. S. 517 (1946).

Here the respondent has invoked, instead of the criminal process, the civil process of the judiciary of the state. This it did by seeking affirmative relief against petitioners through asking in its trial amendment for a declaratory judgment approving its enforcement of the regulation. This action by respondent constitutes grounds for petitioners to invoke the Fourteenth Amendment. The respondent, as stated above, in its trial amendment, demanded a judgment against petitioners. The trial court granted the declaration prayed for by respondent. This declaratory judgment is *res judicata.* It settles the rights of the parties as much as did the criminal action in the *Marsh* and *Tucker* cases. Should any of petitioners attempt to exercise his rights of preaching from door to door in Parkchester he would be subject to imprisonment for contempt of court. A violation of the judgment carries penalties and thus sanctions is given to the regulation promulgated by respondent. See Borchard *Declaratory Judgments,* Second Edition, pp. 438-442.

The action of respondent in praying for a declaratory judgment and the granting of it to respondent by the trial court gives petitioners the right to resort to the Fourteenth Amendment because this is state action. The latest decisions

applicable on this point are *Shelley* v. *Kraemer,* 68 S. Ct. 836 (1948); and *Hurd* v. *Hodge,* 68 S. Ct. 847 (1948).

It is only reasonable and just that petitioners should be entitled to invoke the Fourteenth Amendment in this case. It would be highly unfair to refuse them access to it in the circumstances. Petitioners claimed that the Constitution gave them the right to work in Parkchester from door to door as they do in other communities. Although contesting their right, respondent never invoked the criminal process to judicially settle the matter. Respondent has repeatedly caused its private police to take petitioners and Jehovah's witnesses into custody and deport them from Parkchester. These were arrests. While it is true no summons or complaints were made to institute criminal proceedings, petitioners were nevertheless arrested and deported, which were false arrests at that. Under such circumstances they were forced to appeal to the civil courts for relief in the form of a declaratory judgment and injunction. This was their only remedy, because they were denied the right to raise the issue in criminal proceedings, since respondent refused and failed to institute criminal proceedings but illegally deported them from Parkchester because of the alleged trespass. (See *Hague* v. *C. I. O.,* 307 U. S. 496.) Respondent merely took the law into its own hands by using its power of arrest to deport Jehovah's witnesses. If through this device persons can be denied their right in the New York courts to invoke the Fourteenth Amendment to claim protection of their rights guaranteed under the First Amendment, then equal justice and fairness dictate that it is high time some steps are taken by this Court to obviate predicaments like those in which respondent desperately attempts to put petitioners. Certainly petitioners should be granted by this Court the same rights in these proceedings as they would have had in criminal proceedings that could have been brought for trespass involving

the same facts and the same regulations that are now being considered.

But for the purpose of argument let us assume that what the respondent says is correct, that it is a mere private owner and operator of private apartment buildings, the same as an operator of a single apartment building. The respondent has, nevertheless, resorted to state law to enforce its policy in the regulation challenged here. This enforcement of the regulation against petitioners entitles them to resort to the Fourteenth Amendment to turn up the bulwark of the First Amendment guaranteeing civil liberties.

The respondent has resorted to self-help in the enforcement of the regulation. Thereby it has converted the alleged private regulation into state action. Its private police have taken the law into their own hands. They have falsely arrested petitioners, taking them into custody, and have forcibly and physically deported petitioners from Parkchester. The respondent admits this. It stipulated upon the trial that it would continue to do this for all time to come in the future or as long as petitioners attempted to carry on their door-to-door activity in Parkchester. [60-61]

The false arrests of petitioners because they were alleged by the police force of Parkchester to be trespassers were arrests made pursuant to authority vested in the private police of the Parkchester protective division by the Code of Criminal Procedure, Section 183. This section authorizes arrests by private persons. See *Johnson* v. *May*, 189 App. Div. 196. Thus their so-called private action became state action. *Hague* v. *C. I. O.*, 307 U. S. 496 (1939).

The illegal conduct of the Protective Division of the community of Parkchester in the enforcement of the regulation against petitioners, although claimed to be private, constitutes action taken under color of state law so as to entitle petitioners to invoke the restraint of the First Amendment through the Fourteenth Amendment. See

Sellers v. *Johnson*, 163 F. 2d 877 (C. C. A. 8th, 1947) where a sheriff used private persons to block roads to keep Jehovah's witnesses out of Lacona, Iowa, resulting in prevention of entry by Jehovah's witnesses into a public park to hold a Bible lecture. See also *Screws* v. *United States*, 325 U. S. 91, 107-110, 127-128 (1945); and *Catlette* v. *United States* 132 F. 2d 902 (C. C. A. 4th, 1943). In *United States* v. *Classic*, 313 U. S. 299, at page 326 (1941), it is stated that "misuse of power, possessed by virtue of state law made possible only because the wrong-doer is clothed with authority of state law, is action taken under color of state law."

Grievous Error Committed in Receiving Poll Into Evidence

The respondent took an ex parte deposition of all the inhabitants of Parkchester before trial without notice to petitioners. Upon the trial, although this hearsay evidence related to an immaterial issue, the trial court, over objections duly made by petitioners, received such evidence and considered it in reaching his final determination.

The proof of the circulation of the petition by petitioners among the tenants of Parkchester was not a concession that the ruling of the trial court on the ex parte deposition or "poll" by Parkchester was legal. Petitioners were justified in combating illegal evidence with the same kind of testimony. They were forced to resort to such steps. Such petition was for the sole purpose of cross-examining the "poll" and impeaching the illegal ex parte deposition taken by Parkchester.

The petition received in evidence was subject to the same objection made by petitioners to the referendum. The offer of such incompetent testimony by petitioners to refute the incompetent testimony received by the court from respondent does not constitute a waiver of petitioners' objec-

tion that the evidence received by the court from respondent was inadmissible. *Mance* v. *Hossington*, 205 N. Y. 33, 38; *Worrall* v. *Parmelee*, 1 N. Y. (1 Const.) 519; *Douglas* v. *New York Elevated Ry. Co.*, 14 App. Div. 471.

Petitioners objected to the evidence on the ground that, if received and considered by the court, it violated their rights to freedom of speech, press and worship and deprived them of their liberties without due process of law. This objection raised constitutional questions that should be considered.

The permission to exercise fundamental personal rights does not depend upon obtaining popular vote. Those rights cannot be denied even when popular majority vote is against the exercise of them. Even an ordinance that prescribes for the issuance of a permit only upon "the recommendation of twelve citizens and tax payers in the block" is unconstitutional. In re *Quong Woo*, 13 F. 229. See also Ex parte *Sing Lee*, 96 Cal. 354; *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886). This is especially true when the exercise of fundamental personal liberties is involved, such as freedom of speech, press and worship. *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624 (1943). The exercise of such liberties does not depend upon the arbitrary whim and capricious will of residents within a community. *Hays* v. *City of Poplar Bluff*, 263 Mo. 516. See also *Eubank* v. *Richmond*, 226 U. S. 137 (1912).

This Court should hold that the trial court erred in receiving and considering such evidence. This Court should disregard entirely such evidence in rendering the judgment that should have been rendered by the trial court. In event the Court is not disposed to disregard and strike the evidence, then petitioners say that the judgment of the courts below should be reversed and the cause remanded for a new trial because of the errors committed by the trial court in receiving and considering such evidence.

Conclusion

If the position taken by the courts below that the property rights of landlords confers upon an apartment community the power to censor and prohibit the exercise of civil rights within the community be sustained, a formidable weapon has been forged which defeats the very purpose of the Constitution. There is no end to the walls of imprisonment which such an engine can build high around the millions of apartment dwellers in the nation, including New York City. The devastating consequences will be even greater in the future as the number of great housing projects increase and apartment communities multiply throughout the nation.

Whole communities are now, and have been for many years, owned by one person or corporation in this country. They are commonly referred to as company-owned towns. All dwelling and business buildings in them are rented by the one owner. Usually a gigantic mining company or industrial concern constructs such communities and controls them. Although such places have no municipal government ordained by the state the single owners promulgate private regulations for the conduct of people in their boundaries. Frequently such towns are quite large. In the United States there are scores of such privately owned towns. In note 5 of the opinion of this Court in *Marsh* v. *Alabama,* 326 U. S. 501, 508, there is reference to source material where a more detailed description of such towns may be found. See also *Housing Statistics Handbook,* Housing and Home Finance Agency, Office of Housing Economics (Government Printing Office, Washington, 1948.)

In this postwar era there is a growing tendency of great and expanding private corporations, like respondent, and also government agencies or government-controlled corporations, to buy large sections of property for redevelopment and housing projects. On such properties the owners build

large apartment communities and towns. The residence and business spaces are not sold. They are rented from the single landlord. The government of such projects also is by private regulation. One of the smaller of such projects was involved in *Tucker* v. *Texas*, 326 U. S. 517 (1946).

Certainly portions of the State of New York cannot be withdrawn from the reach of the Constitution by purchase and maintenance of private residential apartment communities. Surely the political and democratic process, the life of which is so dependent on primitive door-to-door visitation, cannot be curtailed. The door-to-door activity of that process is not such a serious and present danger to dwellers of an apartment community as to justify measures that cannot stand the constitutional test in an ordinary community of dwellers of single homes. The rights of apartment dwellers do not rest on any such tenuous basis. The liberties of the people of the United States are as strong and as secure in a community of apartment buildings as in a community of single dwellings. The specious argument of the trial court and the logistical legerdemain of respondent is subversive of this fundamental proposition. The alien doctrine they advance should be nipped in the bud here in this Court.

There can be no question that the court approval of the part of the regulation requiring a permit from the manager of the community is in direct conflict with and flouts many decisions of this Court where the same provision has been invalidated time and again. While this Court has not expressly decided that the "Green River" type of law is invalid as applied to distribution of literature it is fair to state that the Court has implicitly disapproved such laws as a burden, abridgment and prohibition of door-to-door activity in *Martin* v. *Struthers*, 319 U. S. 141 (1943). On the authority of the many decisions by this Court in cases involving Jehovah's witnesses, heretofore cited, it is submitted that the decision below is plainly erroneous and

that it would be appropriate, without more, to grant the writ of certiorari and reverse the judgment of the courts below on the grounds that they are not compatible and flout the decisions of this Court, which would not require an oral argument and further hearing in this Court. This was done in *Brotherhood of Railway and Steamship Clerks* v. *United Transport Service Employees,* 320 U. S. 715 (1943); rehearing denied 320 U. S. 816 (1944); and *United States* v. *Balogh,* 329 U. S. 692; rehearing denied 329 U. S. 835 (1947). Compare *Mathews* v. *West Virginia,* 320 U. S. 707 (1943).

This action could be appropriately taken, notwithstanding the Court has not expressly declared the "Green River" law to be invalid. Even assuming the "Green River" provisions of the regulation to be valid, the judgment should, nevertheless, be reversed because of the manifest error of the court in holding that the requirement of a permit from the community manager is not a violation of the constitutional rights of petitioners. If any one of the provisions of the regulation is invalid the judgments cannot stand even though the other provisions may be valid. *Stromberg* v. *California,* 283 U. S. 359, 364-368 (1931); *Williams* v. *North Carolina,* 317 U. S. 287, 291-292 (1942).

Prayer for Relief

WHEREFORE petitioners pray that this Court issue a writ of certiorari to the Supreme Court of New York County, the court to which the Court of Appeals remitted the record, and which court now possesses the record in this case, so that this Court can review the decisions and judgments of the Court of Appeals of the State of New York, the Appellate Division, First Department, of the Supreme Court of New York, and the Supreme Court of New York County, directing such court to certify to this Court for review

and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the judgment of the Court of Appeals, affirming the judgments of the inferior courts of New York, be here set aside simultaneously with the granting of the writ of certiorari and the cause remanded to the court below for further proceedings consistent with the decisions of this Court; or, in the alternative such relief be granted after oral argument and submission to this Court following the granting of the writ of certiorari; and petitioner prays for such other and further relief in the premises as to this Court may seem just and proper in the circumstances.

WATCHTOWER BIBLE AND TRACT SOCIETY, INC.,
GEORGE KELLY, MAURICE L. HARE and
EARL W. HITCH, *Petitioners*

By

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